Supreme Court, U.S.
FILED
DEC 17 1998
OFFICE OF THE CLERK

No. 98-802

In The

Supreme Court of the United States

October Term, 1998

SHAMROCK FARMS COMPANY AND SHAMROCK FOODS COMPANY,

Petitioners,

v.

ANN M. VENEMAN, SECRETARY, DEPARTMENT OF FOOD AND AGRICULTURE, STATE OF CALIFORNIA, RICHARD TATE, CHIEF, MILK AND DAIRY FOODS CONTROL BRANCH, DIVISION OF ANIMAL INDUSTRY, DEPARTMENT OF FOOD AND AGRICULTURE, STATE OF CALIFORNIA,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Court of Appeals, in following this Court's decisions that confirm Congress' affirmative power to authorize state regulation, properly determined that Section 144 of the Federal Agriculture Improvement and Reform Act of 1996 ("FAIRA") (7 U.S.C. § 7254) permitted the State of California to continue in effect its long-established compositional standards for fluid milks, thereby immunizing those standards and related laws from attack under the "dormant" Commerce Clause.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
STATEMENT	1
I. CALIFORNIA'S FLUID MILK LAWS	2
II. THE FEDERAL AGRICULTURE IMPROVEMENT AND REFORM ACT OF 1996	5
III. THE PROCEEDINGS BELOW	6
REASONS FOR DENYING THE PETITION	9
I. THE COURT OF APPEALS PROPERLY FOUND THAT CONGRESS AUTHORIZED CALIFORNIA'S MILK STANDARDS	11
II. THE COURT OF APPEALS PROPERLY FOUND THAT CONGRESS AUTHORIZED CALIFORNIA'S MILK PRICING AND POOLING LAWS	16
III. THE COURT OF APPEALS' DECISION DOES NOT IMPEDE INTERSTATE COMMERCE AND FURTHER REVIEW WOULD NOT ALTER THE OUTCOME OF THE UNDERLYING LITIGATION	18
CONCLUSION	20

TABLE OF AUTHORITIES

Page

CASES

Arriaga v. Loma Linda University, 10 Cal.App. 4th 1556 (1992) 19

C&A Carbone v. Town of Clarkston, 511 U.S. 383 (1994) 11

In re Hoffman, 155 Cal. 114 (1909), *overruled in part on other grounds, In Re Lane*, 58 Cal. 2d 99 (1962) 3

Migra v. Warren City School Dist. Bd. of Educ., 465 U.S. 75 (1984) 19

Northeast Bancorp, Inc. v. Board of Governors, 472 U.S. 159 (1985) 11, 12, 13, 17

Rutan v. Republican Party of Illinois, 497 U.S. 62 (1990) 16

South-Central Timber Dev. Inc. v. Wunnicke, 467 U.S. 82 (1984) 17

United Egg Producers v. Dept. of Agric., 77 F.3d 567 (1st Cir. 1996) 13, 14

W. & S. Life Ins. Co. v. State Bd. of Equalization, 451 U.S. 648 (1981) 11, 17

White v. Mass. Council of Const. Employers, Inc., 460 U.S. 204 (1983) 11

Wyoming v. Oklahoma, 502 U.S. 437 (1992) 13, 14

OTHER AUTHORITIES

7 C.F.R. § 1131.1 *et seq.* 4

7 U.S.C. § 608c(8) 4

7 U.S.C. § 7254 ..... 6, 11

TABLE OF AUTHORITIES – Continued

Page

16 U.S.C. § 824(b)(1) 14

28 U.S.C. § 1738 19

110 Stat. 888 (1996), Pub. L. No. 104-127 5

Cal. Food & Agric. Code § 38181 3

Cal. Food & Agric. Code § 38191 3

Cal. Food & Agric. Code § 38211 3

Cal. Food & Agric. Code § 61801 et seq. 4

Cal. Food & Agric. Code § 61802 3

Cal. Food & Agric. Code § 61802(c) 4, 9

Federal Agriculture Improvement and Reform Act of 1996 5

H.R. Conf. Rep. No. 104-494, 104th Cong., 2d Sess. 339 (1996), *reprinted in* 1996 U.S.C.C.A.N. 683, 701 ..... 6, 15

Restatement (Second) of Judgments § 13 19

Federal Rule of Civil Procedure 12(b)(6) 6, 16

STATEMENT

In unanimously affirming the District Court's dismissal of Petitioners' complaint, the Court of Appeals properly determined that Congress has expressly authorized the State of California to continue in effect its long-established fluid milk standards, thereby immunizing these standards from attack under the "dormant" Commerce Clause. Because Petitioners alleged that the state's milk pricing and pooling laws were "inextricably related" to California's fluid milk standards (Complaint ¶28), the Court of Appeals further determined that these laws were within the ambit of the Congress' authorization. The Court of Appeals thereafter denied a petition for rehearing and no judge of the Court of Appeals requested a vote on Petitioners' suggestion for rehearing *en banc*.

In its decision, the Court of Appeals correctly stated and applied the principles of statutory construction established by this Court. The statute's plain language demonstrates Congress' unmistakable intention to empower California to continue in effect its unique system of dairy regulation. Contrary to the misleading assertions of the Petition, California's fluid milk standards do not impede or discriminate against interstate commerce. Following a full trial on the merits in a related action earlier this year, a state court squarely ruled against Petitioner Shamrock Foods on this very point, finding that "there is no credible evidence that there was any burden on interstate commerce as a result of the statutory requirement . . . and enforcement of the compositional

standards."[1] That judgment in all likelihood will be final and res judicata before this Court would even hear the question purportedly presented for certiorari. This Court's decision thus would likely have no impact upon the ultimate outcome of Petitioners' case. Consequently, this case does not raise an issue of great practical importance. Because the Court of Appeals' ruling properly applies settled rules of law, does not conflict with the decision of any other Circuit, and involves a highly specific statute of limited application, review by this Court is not warranted.

I. CALIFORNIA'S FLUID MILK LAWS

For more than 90 years, the State of California has by statute specified minimum compositional standards for

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[1] Statement of Decision, filed March 18, 1998, ¶ 11, *People v. Shamrock Foods Co.*, Case No. 702204. Resp. App. 1. Shamrock has appealed from the trial court decision based upon the trial court's ruling on a state law issue not raised by the Petition. As the Petition concedes, Petitioner Shamrock Foods has not appealed from the portion of the trial court's findings of law and fact relating to interstate commerce issues. *People v. Shamrock Foods Co.*, Case No. D031041 (Cal. App. 4th Dist.). The Petition also misrepresents the basis for the trial court's award of civil penalties. Of the $696,000 in civil penalties awarded against Shamrock, $240,000 related to sales of sub-standard milk in California. The Court based its award of the remaining $456,000 in civil penalties upon its finding that "[f]or a period of 80 days, from April 30, 1997 to July 15, 1997, Shamrock Foods Company intentionally and knowingly violated the [Court's preliminary] injunction. These violations persisted until they were discovered by the State of California." Statement of Decision ¶5, Resp. App. 3.

fluid milks sold and marketed within the State.[2] The California Legislature recognizes that regulation of the milk industry is critical to the "health and welfare of the inhabitants of this state."[3] Thus, over time, and in response to consumer demand, the California Legislature has enacted and amended its milk standards to permit the sale and marketing in California of various fluid milks including whole milk, 2% lowfat milk, 1% lowfat milk, skim milk, and other fluid milk products.[4] Such standards apply even-handedly to all fluid milks marketed or sold in California, and do not distinguish between milk produced in-state and out-of-state.

In general, raw milk consists of milkfat, solids-not-fat ("SNF") and a fluid carrier. Complaint ¶ 10. SNF refers to milk solids, other than milkfat, which are naturally found in raw milk and contain nutrients such as calcium and proteins. *Id.*, ¶ 13. The percentage of SNF found in raw milk varies naturally depending upon many factors including season, cow breed, and geography. *Id.*, ¶¶ 11, 14. Each of the California milk standards establishes a specified minimum percentage of SNF which a particular fluid milk must contain. To the extent SNF is increased or added to fluid milk, the nutritional content of fluid milk is also increased. The California standards for reduced-fat milks were enacted based in part on studies indicating that consumers preferred reduced-fat milks with added

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[2] *In re Hoffman*, 155 Cal. 114, 116-117 (1909), *overruled in part on other grounds, In Re Lane*, 58 Cal. 2d 99 (1962).

[3] Cal. Food and Agric. Code § 61802.

[4] *See, e.g.*, Cal. Food and Agric. Code §§ 38181, 38191 and 38211.

SNF, which enhances not only these milks' nutritional content, but also their palatability and taste. The minimum SNF requirements also ensure that the nutritional content and flavor of fluid milks are consistent throughout the year, and across all regions of the State.

California's milk pricing and pooling laws and regulations are generally designed to stabilize and regulate the milk market within the State. *See* Cal. Food & Agric. Code § 61801 *et seq.* These laws are necessary to prevent economic disruption that could undermine the state's "standards of content and purity." *See* Cal. Food & Agric. Code § 61802(c) and Pet. App. 10a. Under the milk pricing laws, the state sets minimum prices that California processors must pay California farmers for raw milk. These prices are based in part on the SNF content of the raw milk. The California milk pooling laws deal generally with the pooling and allocation of amounts paid by California processors to California milk producers. By contrast, the prices that Petitioners pay Arizona producers for milk are exclusively regulated under federal law.[5]

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[5] As Petitioners' complaint alleges, they fall under the jurisdiction of the federal Central Arizona Milk Marketing Order and United States Department of Agriculture. Complaint ¶ 6. Thus, the prices (including any allowances or credits) which Petitioners pay producers for raw milk in Arizona is specifically governed by *federal* regulation and *not* California state law. *See* 7 C.F.R. § 1131.1 *et seq.* (federal regulations establishing milk prices for the federal Central Arizona Marketing Area). The State of California does not regulate the prices which Shamrock, as an Arizona-based producer/processor, pays for milk purchased in Arizona. Moreover, because federal milk marketing orders are *consensual* in nature (7 U.S.C. § 608c(8)), Shamrock has presumably acquiesced to the federal Central

II. THE FEDERAL AGRICULTURE IMPROVEMENT AND REFORM ACT OF 1996

On April 4, 1996, President Clinton signed into law the omnibus Federal Agriculture Improvement and Reform Act of 1996 ("FAIRA"), also known as the 1996 Farm Bill. *See* 110 Stat. 888 (1996), Pub. L. No. 104-127 (Title I of the Act, containing Section 144, was entitled the Agricultural Market Transition Act). In Section 144 of the Act, Congress specifically authorized the State of California to enforce its more nutritious standards of identity with respect to milks in interstate commerce. Section 144 states:

> Nothing in this Act or any other provision of law shall be construed to preempt, prohibit, or otherwise limit the authority of the State of California, directly or indirectly, to establish or continue to effect any law, regulation, or requirement regarding –
>
> (1) the percentage of milk solids or solids not fat in fluid milk products sold at retail or marketed in the State of California; or
>
> (2) the labeling of such fluid milk products with regard to milk solids or solids not fat.

Arizona Marketing Order's milk pricing regulations. Nothing prevents Shamrock from petitioning Congress or the U.S. Secretary of Agriculture to adopt a pricing regulation for the Central Arizona Marketing Area which also bases milk price on solids-not-fat. Congress and the U.S. Department of Agriculture are in a much better position to address Petitioners' concerns.

7 U.S.C. § 7254. Contrary to the characterization of this provision in the Petition, this section did not merely save the California standards from preemption. Pet. 12-17. Instead, Congress made clear that no other provision of law shall be construed "to preempt, *prohibit, or otherwise limit the authority of the State of California* directly or indirectly, [with respect to fluid milk standards]." [emphasis added]. The House Conference Committee Report accompanying the passage of Section 144 reinforces the plain language of the statute. It explicitly states that Section 144 authorizes California to "fully enforce and apply" its compositional standards to "all fluid milk sold at retail or marketed in the State of California." H.R. Conf. Rep. No. 104-494, 104th Cong., 2d Sess. 339 (1996), *reprinted in* 1996 U.S.C.C.A.N. 683, 701.

III. THE PROCEEDINGS BELOW.

Petitioners brought the present action in the District Court, claiming that California's fluid milk standards along with its "inextricably related" milk pricing and pooling laws violated the Commerce Clause and other provisions of the Constitution. Notwithstanding Section 144's express authorization of California's fluid milk standards, Petitioners also continued to sell and distribute various sub-standard fluid milks in California. As a state trial court subsequently found in a separate enforcement action, Petitioner Shamrock Foods "knowingly and consciously" continued such unlawful sales even after entry of a preliminary injunction.

California moved to dismiss the complaint in the federal action pursuant to Federal Rule of Civil Procedure

12(b)(6). The State's motion was based, in part, on decisions of this Court which hold that where federal law, such as Section 144, expressly authorizes state law or action, such state law is immune from Commerce Clause attack. The District Court granted the State's motion, finding that the California milk laws were not subject to the "dormant" Commerce Clause because Congress had indeed acted and had affirmatively authorized these laws in Section 144 of FAIRA. The District Court concluded that because Section 144 was clear and unambiguous on its face, its plain language authorizing California's milk laws must be given effect.

Petitioners moved for reconsideration. In support of the motion for reconsideration, and in direct conflict with their position taken in an unblushing effort to entice this Court to grant yet further review, Petitioners specifically requested the District Court to consider a melange of assorted documents which Petitioners loosely characterized as "legislative history." The District Court denied Shamrock's motion for reconsideration, again finding that California's fluid milk laws were constitutionally valid under the Commerce Clause. In so holding, the District Court once again carefully reviewed the actual language of Section 144. The District Court found that "the language Congress employed expressed its intent with complete clarity and the plaintiffs have failed to explain why the court should believe otherwise." Pet. App. 27a.

The Court of Appeals affirmed. Contrary to the misleading suggestion of the Petition, the Court of Appeals reached no conclusion as to whether or not the standards in fact had any impact on interstate commerce. Pet. App. 5a. There simply was no need for the Court to reach this

issue. With respect to the State's compositional standards for fluid milks, the Court of Appeals based its decision *exclusively* upon the relevant statutory language. Pet. App. 6a-9a. Here, the Court found, "Congress was unmistakably clear in exempting California's milk standards from all provisions of law, wherever situated, not from coverage under a single statute." *Id.* at 9a. Since the Court of Appeals did not even consider legislative history in reaching its conclusion regarding California's compositional standards, it is improper for the Petition to suggest in the question presented for certiorari that the Court of Appeals erred in doing so.

The Court of Appeals' analysis of the milk pricing and pooling laws was similarly grounded in the language of the statute. Recognizing that Section 144 did not expressly identify these laws, the Court nonetheless based its analysis squarely upon the language of the statute establishing a "prohibition against indirect limitations on laws, regulations, or requirements regarding milk standards." Pet. App. 9a-10a. Importantly, Petitioners conceded during oral argument that "the pricing and pooling laws were adopted in order to assist milk producers in complying with the milk content provisions." Pet. App. 10a. This admission also matched Petitioners' allegation in their complaint that: "California's milk standards are inextricably related to state milk pricing and pooling laws . . . " Complaint ¶28. The Court of Appeals found that Petitioners' concession was "amply supported" both by the legislative history and California law describing that the purpose of the pooling and pricing laws "is to ensure that milk with the state-mandated SNF content is readily available to Californians." Pet.

App. 10a, *citing* Cal. Food & Agric. Code § 61802(c). In appealing from the District Court's rulings, Petitioners specifically contended that the Court erred "in refusing to examine legislative history in making its finding." Brief for Appellants at p. 22. Having convinced the Court of Appeals to consider this inquiry and having lost on the merits, Petitioners now reverse course, asserting instead that the Court of Appeals erred by even reviewing whether the legislative history comported with its independent analysis of the pertinent statutory language.

REASONS FOR DENYING THE PETITION

The Court of Appeals here correctly determined that Congress unmistakably authorized the California dairy laws which Petitioners attack in their complaint. In reaching this conclusion, the Court of Appeals followed, in straightforward fashion, the test clearly established in numerous decisions of this Court. The Petition nowhere challenges the correctness of this Court's settled standard nor does it contend that the Court of Appeals applied a different rule. Rather, the Petition takes issue with the Court of Appeals' application of this test to an act of Congress which specifically identifies the State of California, defines the subject matter that Congress has authorized California to regulate, and contains statutory language expressing Congress' intentions in the clearest and broadest possible terms. Similarly, there is simply no conflict between the Court of Appeals decisions and the decisions of other circuits. The Petition does not seriously argue otherwise.

The Court of Appeals' decision did not settle any issue of great practical importance. The challenged fluid milk standards do not discriminate against interstate commerce. It is wrong to suggest otherwise. California's fluid milk standards apply evenhandedly to both in-state and out-of-state milk. Neither petitioners nor anyone else is barred from selling whole milk, lowfat milk, non-fat milk or other milk products in California. Even the Petition hedges on this point, claiming only that the standards make it harder for Petitioners to sell some of their milks in California during "certain seasons" and from selling their lowfat milks in California because they have elected not to bring their milks up to California standards. Petitioners simply have to meet the same standards of consistency and content that apply to each and every in-state and out-of-state milk processor which sells milk in California. Most tellingly, following a full trial on the merits earlier this year, a state court trial judge found that Shamrock had introduced "no credible evidence that there was any burden on interstate commerce as a result of the statutory requirement . . . and enforcement of the compositional standards."

I. THE COURT OF APPEALS PROPERLY FOUND THAT CONGRESS AUTHORIZED CALIFORNIA'S MILK STANDARDS.

The Court of Appeals' ruling here is entirely consistent with this Court's decisions which hold that where Congress authorizes State action or law – as Congress did here in Section 144 of FAIRA (7 U.S.C. § 7254) (*see infra*, p. 16) – such action or law is immune from Commerce Clause challenge. It is well established that: "[w]hen Congress so chooses, state actions which it plainly authorizes are invulnerable to a constitutional attack under the Commerce Clause." *Northeast Bancorp, Inc. v. Board of Governors*, 472 U.S. 159, 174 (1985); *see also, W. & S. Life Ins. Co. v. State Bd. of Equalization*, 451 U.S. 648, 652-53 (1981) ("Congress may 'confer upon the States an ability to restrict the flow of interstate commerce that they would not otherwise enjoy' . . . . If Congress ordains that the States may freely regulate an aspect of interstate commerce, . . . [State action] is rendered invulnerable to Commerce Clause challenge"); *White v. Mass. Council of Const. Employers, Inc.*, 460 U.S. 204, 213 (1983)

Here, the Court of Appeals identified and applied the proper test: "Congress must be 'unmistakably clear' before we will conclude that it intended to permit state regulation which would otherwise violate the dormant Commerce Clause." *C&A Carbone v. Town of Clarkston*, 511 US. 383, 408 (1994) (O'Connor, J., concurring); Pet. App. 6a. While the Petition spills substantial ink showing how well established this test is in this Court's jurisprudence, it does not contend that the Court of Appeals failed to identify the right rule nor does it challenge the appropriateness of the test itself.

Contrary to the Petition's disrespectful suggestion that both the District Court and a unanimous panel of the Court of Appeals merely "gave a wink" to this Court's well-established standards, the Court of Appeals in truth responsibly applied this Court's mandates. It found that Congress, in enacting Section 144, afforded "sweeping" protection to California's milk standards in language that encompassed the Commerce Clause. As the Court of Appeals properly observed, the statute does not simply bar preemption: "Rather, it states that no provision of law shall 'preempt, prohibit, or otherwise limit' California's milk laws or regulations." Pet. App. 7a. This highly particular language directly supported the Court's conclusion that Congress unmistakably intended to preserve the standards "from any sort of challenge, including one based on Commerce Clause grounds." *Id.*

In *Northeast Bancorp*, 472 U.S. at 174-75, this Court upheld against Commerce Clause challenge two state statutes which limited the ability of out-of-state and out-of-region bank holding companies from acquiring in-state banks. The Court noted that Congress had already addressed this general area in the Bank Holding Company Act and specifically authorized such restrictive state laws under the Douglas amendment to that Act. *Id.* at 170-71. The Court stated that while the state laws might otherwise violate the "dormant Commerce Clause," in this instance, "the commerce power of Congress is not dormant, but has been exercised by that body when it enacted the Bank Holding Company Act and Douglas amendment . . . ." *Id.* at 174.

Similarly, Congress has affirmatively authorized the California milk standards under Section 144, and the

restrictions of the dormant Commerce Clause do not apply. Notably, the state laws at issue in *Northeast Bancorp* were enacted *after* Congress' passage of the Douglas Amendment, and were therefore not even before Congress when it enacted the Douglas amendment in 1956. *Id.* at 164 (state laws were enacted in 1982 and 1983). By contrast, Congress' approval of California's milk standards is even more explicit because these standards already existed; Congress thus knew the nature, scope and text of the California laws it authorized. Section 144 is not merely a savings clause reserving powers to the states, nor a general grant of authority to the several states, but rather an affirmative grant of specific authority to an identified state – the State of California – allowing it to "establish or continue to effect any law, regulation or requirement" regarding the composition and labeling of one type of product – fluid milks – sold or marketed within the State.

This affirmative and express grant of Congressional authority to California distinguishes the present case from *Wyoming v. Oklahoma*, 502 U.S. 437 (1992) and *United Egg Producers v. Dept. of Agric.*, 77 F.3d 567 (1st Cir. 1996) upon which Petitioners rely. In both of these cases the federal statutes at issue made only general references to the several states' ability to enact future laws, and did not (as here) specifically authorize a particular state's laws.

In *United Egg Producers*, the First Circuit construed a proviso in a federal statute expressly *prohibiting* states and other jurisdictions, except those in noncontiguous areas of the United States, from requiring that egg labels indicate the state of origin. *Id.* at 569 (citing 21 U.S.C.

§ 1052(b)(2)). By contrast, Section 144 *affirmatively* authorizes California itself to "establish or continue to effect any law, regulation, or requirement regarding" fluid milk content, and states that "nothing" shall "preempt, prohibit or otherwise limit" this authority. Notably, in declining to construe Section 1052(b)(2)'s language as demonstrating Congress' intent to grant Commerce Clause immunity to Puerto Rico, the First Circuit suggested that "an *affirmatively stated grant of permission* to noncontiguous jurisdictions [such as Puerto Rico]" would contain the requisite Congressional intent. *Id.* at 571 (emphasis added). Section 144 is precisely this kind of affirmative grant of authority, allowing California to require that all fluid milk sold and marketed within the State meet minimum nutritional standards.

In *Wyoming*, this Court found that the Federal Power Act's "savings clause" (16 U.S.C. § 824(b)(1)), by its own terms, only saved "otherwise lawful" state laws from preemption, but not from the dormant Commerce Clause. Section 144, by contrast, is not limited to preemption. As the Court of Appeals determined in rejecting such an argument, Section 144 on its face "does not simply bar preemption." It says "preempt, prohibit or otherwise limit" California milk laws or regulations. Pet. App. 7a.

Faced with the clear language of Section 144, Petitioners attempt to create an ambiguity in the statute's language through resort to the very legislative history which they now criticize the Court of Appeals for even considering. This tactic exposes the illusory nature of the question which the petition purports to present for certiorari. It also fails because the key legislative history only confirms that Congress unmistakably intended to

authorize California's milk standards. Petitioners omit from their petition critical language from the House Conference Committee Report that unambiguously expresses Congress' intentions:

> The State of California has had a system for requiring fortified fluid milk since the early 1960's. These fluid milk standards were adopted by the State legislature and any revision of these standards must be approved by the state legislature. *These standards apply to* ***all*** *fluid milk sold at retail or marketed in the State of California.*
>
> ***The Managers intend*** *for the State of California to be* ***able to fully enforce and apply*** *its fluid milk standards and their attendant labeling requirements to* ***all*** *fluid milk sold at retail or marketed in the State of California.*

H.R. Conf. Rep. No. 104-494, 104th Cong. 2d Sess. 338-39 (1996), *reprinted in* 1996 U.S.C.C.A.N. 683, 701 (emphasis added).

This express statement of what "[t]he Managers intend" in enacting Section 144 "ensures that there [was], in fact, . . . a collective decision" of Congress to approve the California milk standards. The Court of Appeals properly applied the right test. It reached precisely the result intended by Congress in enacting Section 144. Remarkably, the Petition itself comes close to conceding this very point. Pet. 18. Further review is unnecessary.

II. THE COURT OF APPEALS PROPERLY FOUND THAT CONGRESS AUTHORIZED CALIFORNIA'S MILK PRICING AND POOLING LAWS.

The Court of Appeals also properly determined that Section 144 immunized California milk pricing and pooling laws from Commerce Clause attack. Petitioners' accusation that the Court of Appeals "made no attempt to show that these provisions are authorized by the text of Section 144" is false. Pet. 17. Indeed, the very starting point of the Court of Appeals' analysis is the statute. The language of Section 144 makes clear Congress' intention to prohibit indirect limitations on the state's authority to enact or to continue in effect laws, regulations, or requirements regarding California's milk standards. Pet. App. 9a-10a. While Petitioners make the newfound claim in their Petition that the "pricing and pooling laws address the very different subjects of milk prices and subsidies for milk processors," (Pet. 18) this contention directly flies in the face of the allegation in their complaint that, "California's milk standards are inextricably related to state milk pricing and pooling laws," (Complaint ¶28) and their admission at oral argument, which they now seek to disown, that the pricing and pooling laws were adopted in order to assist milk producers in complying with the milk content provisions. Pet. App. 10a. For purposes of review of a motion to dismiss pursuant to Rule 12(b)(6), the Court must assume plaintiffs' well-pleaded allegations are true. *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 65 n.1 (1990). These allegations (Complaint ¶¶ 28-34) establish the highly interrelated nature of the California standards and the state's pooling and pricing laws.

Once again departing from their position on appeal, the Petition criticizes the Court of Appeals for its consideration of legislative history. While the Petition makes much of the fact that Section 144 does not mention the pricing and pooling laws by name, the Petition elsewhere concedes this Court's determination not to "require use of any particular 'talismanic' form of words . . . " in determining Congress' intent to authorize state law. *South-Central Timber Dev. Inc. v. Wunnicke*, 467 U.S. 82, 91 (1984); Pet. 9. Where, as here, Congressional *intent* is unmistakable, it is of no moment that Petitioners might be able to concoct even better statutory language than Congress chose to employ.

In many cases upholding state laws against Commerce Clause attack, this Court has found Congressional authorization of state laws which Congress did not expressly identify; indeed, even state laws which had not yet been enacted at the time of Congress' authorization. *See, e.g., Northeast Bancorp*, 472 U.S. at 164 (upholding state laws enacted 25 years after initial Congressional authorization). The scope of Congress' authorization is not limited to specifically identified state statutes. As this Court stated in *W. & S. Life Ins. Co.*:

> If Congress ordains that the States may freely regulate an aspect of interstate commerce, any action taken by a State within the scope of the congressional authorization is rendered invulnerable to Commerce Clause challenge.

451 U.S. at 652-53.

III. THE COURT OF APPEALS' DECISION DOES NOT IMPEDE INTERSTATE COMMERCE AND FURTHER REVIEW WOULD NOT ALTER THE OUTCOME OF THE UNDERLYING LITIGATION.

Further review is unwarranted because California's milk compositional standards apply even-handedly to all milk sold or marketed in California and do not impede interstate commerce. Petitioners do not suffer any "discrimination" because of its geographic locale; an in-state milk processor selling substandard fluid milk in California would equally violate California's facially-neutral milk standards. Petitioners, like any in-state producer of substandard milk, may fortify their milk to achieve California's nutritional standards. Petitioners (unlike other out-of-state processors which sell fluid milks in California) simply choose not to do so.

A state court ruled on this exact issue against Petitioner Shamrock Foods, finding that "there is no credible evidence that there was any burden on interstate commerce as a result of the statutory requirement . . . and enforcement of the compositional standards."[6] The state court ruled against the Petitioner after a full and fair trial on the merits, where Petitioner had the opportunity to present evidence supporting its contention that the California milk standards burdened interstate commerce. As such, further review simply would not alter the ultimate result of Petitioners' lawsuit.

Indeed, it is probable that Petitioner Shamrock Foods is collaterally estopped from relitigating the Commerce

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[6] See footnote 1.

Clause issue given the state court's ruling. Federal courts are required to give the same preclusive effect to any statute or judicial decision of a state which would be given under the law of the state. *Migra v Warren City School Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984). The Full Faith and Credit Statute, 28 U.S.C. § 1738, codifies this principle. Petitioner failed to appeal the state court's ruling on the Commerce Clause issue, and under California law, issues not raised on appeal are deemed abandoned. *Arriaga v. Loma Linda University*, 10 Cal.App.4th 1556, 1559 (1992). Therefore, the state court's ruling on the Commerce Clause issue may be sufficiently final to preclude Petitioner Shamrock Foods from relitigating the issue in the District Court. See Restatement (Second) of Judgments § 13, *cited with approval in, Stonewall Ins. Co. v. City of Palos Verdes Estates*, 46 Cal.App.4th 1810, 1840 (1996). Indeed, the state court's ruling, in all likelihood, will be final before this Court would decide the issue purportedly raised by the Petition. Pursuant to the doctrines of collateral estoppel and res judicata, it is likely for this further reason that review by this Court would have no effect on the present federal litigation.

In any event, Congress in the year 2002, and perhaps before, will revisit dairy issues upon the expiration of the 1996 Farm Bill reforms. The comprehensive changes contained within the 1996 Farm Bill were the product of extensive debate and legislative compromise. Petitioners here ask this Court to rewrite a portion of this landmark legislation. Such is the province of Congress. The Petition should be denied.

CONCLUSION

For the foregoing reasons, the Petition should be denied.

Date: December 16, 1998

Respectfully submitted,

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APPENDIX

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. SHAMROCK FOODS COMPANY, an Arizona corporation, DOES I through CC, ROES I through C, Defendants.	Case No. 702204 STATEMENT OF DECISION (Filed March 18, 1998)

A trial in the above-entitled matter was held between January 6, 1998, and January 13, 1998, in Department 45 of the Superior Court for San Diego County, before the Honorable Judge Robert J. O'Neill. Daniel E. Lungren, Attorney General, by Deputy Attorneys General Randall B. Christison and Mark J. Urban, appeared as counsel for the Plaintiff. DeCuir & Somach, by Michael E. Vergara, and Blodgett Makechnie & Vetne, by John H. Vetne, appeared as counsel for Defendant Shamrock Foods Company.

Based on the evidence presented at trial and the record of this case, the Court makes the following determinations of law and fact:

1. From April 5, 1996, to November 9, 1996, and from April 30, 1997, to July 15, 1997, Shamrock Foods Company continuously sold and delivered milk, 2% milk, 1% milk, and nonfat milk that did not meet California's minimum compositional standards for those products set forth in Food and Agricultural Code sections 35784, 38181, 38191, and 38211. These actions violated the provisions of Food and Agricultural Code section 32901 and thereby were an unlawful and unfair business practices under Business and Professions Code sections 17200 *et seq.* These violations were knowing, intentional, and persistent.

2. From April 5, 1996, to November 8, 1996, and from April 30, 1997, to July 15, 1997, Shamrock Foods Company continually sold and delivered milk, 2% milk, 1% milk, and nonfat milk to its customers without informing any of its customers that those products were different from and did not meet California compositional standards. Such actions were false, deceptive, and misleading in violation of Food and Agricultural Code section 32914 and Business and Professions Code section 17200 *et seq.* These violations were knowing, intentional, and persistent.

3. From April 5, 1996, to November 8, 1996, Shamrock Foods Company made an estimated 19,125 deliveries to 225 customers of approximately 93,819 gallons of fluid milk violating the compositional standards of California law. From April 30, 1997, to July 15, 1997, Shamrock Foods Company made deliveries of 4,057 gallons of milk violating the compositional standards of California law.

4. At least 6 of those customers directly served disabled persons or senior citizens as those terms are defined in Business and Professions Code section 17206.1. Approximately 1,188 gallons were delivered to those facilities from April 5, 1996, through October 21, 1996.

5. On November 8, 1996, this Court issued a preliminary injunction preventing Shamrock Foods Company from selling or delivering milk in violation of Food and Agricultural Code section 32901. For a period of 80 days, from April 30, 1997, to July 15, 1997, Shamrock Foods Company intentionally and knowingly violated the injunction. These violations persisted until they were discovered by the State of California.

6. Each delivery of milk constitutes a separate violation of Food & Agriculture Code, section 32901 and Business and Professions Code section 17200.

7. The legislative context for the adoption of A.B. 444 in 1994 shows that the enactment of that legislation, including section 32912, did not intend to modify, alter, or affect in any way the scope or enforceability of California's milk compositional standards.

8. The legislative history for the adoption of A.B. 444 in 1994 shows that the Legislature in enacting that legislation did not intend to modify, alter, or affect in any way the scope or enforceability of California's milk compositional standards.

9. Food and Agricultural Code section 32912 does not permit the sale or delivery of milk, low-fat milk, and skim milk that does not meet the California's milk compositional standards.

10. The compositional standards of fluid milk set out in Food & Agriculture Code, sections 32911, 35784, 38211, and 38181, have a rational basis under the California Constitution, by requiring a higher nutritional value for milk.

11. There is no credible evidence that there was any burden on interstate commerce as a result of the statutory requirement of application and enforcement of the compositional standards set out in Food & Agriculture Code, sections 32911, 35784, 38181, and 38211.

12. Samples of milk were left with the customers of Shamrock Foods Company as provided in Food and Agricultural Code section 32732.

13. There was no selective, discriminatory or improper prosecution of the action against Shamrock Foods Company.

Based on these determinations of law and fact, judgment shall be entered for the Plaintiff as follows:

1. Shamrock Foods Company shall be permanently enjoined from selling or delivering milk that does not meet the minimum compositional standards;

2. Shamrock Foods Company shall pay a civil penalty of $240,000 under Business and Professions Code section 17206.

3. Shamrock Foods Company shall pay a civil penalty of $ 0 under Business and Professions Code section 17206.1.

4. Shamrock Foods Company shall pay a civil penalty of $456,000 for violation of the Court's injunction as provided in Business and Professions Code section 17207.

5. The People of the State of California shall recover its costs from Shamrock Foods Company.

Dated: MAR 18 1998.

/s/ Robert J. O'Neill
ROBERT J. O'NEILL
Judge of the Superior Court